

No. 13-20-00377-CV

In The Court Of Appeals FILED IN
Thirteenth District Of Texas At Corpus Christi 13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS
9/3/2020 10:54:23 AM
KATHY S. MILLS
Clerk

CERTAIN UNDERWRITERS AT LLOYD’S OF LONDON SUBSCRIBING TO
POLICY NO. NAJL05000016-H87, as Subrogee of Momentum Hospitality, Inc. &
75 and Sunny Hospitality d/b/a Fairfield Inn & Suites,
Plaintiff-Appellant

v.

D’AMATO CONVERSANO, INC. d/b/a DCI ENGINEERS, and
MAYSE & ASSOCIATES, INC.,
Defendants-Appellees.

Plaintiff-Appellant’s Motion To Consolidate Appeals

Plaintiff-Appellant, CERTAIN UNDERWRITERS AT LLOYD’S OF
LONDON SUBSCRIBING TO POLICY NO. NAJL05000016-H87
 (“Underwriters”), respectfully submits this Motion to Consolidate Appeals. In
support of this request, Underwriters state as follows.

1. This matter arises out of property damage to a hotel owned by
Underwriters’ insured. Underwriters brought this subrogation action against several
Defendants, including Defendant-Appellees D’Amato Conversano, Inc. d/b/a/ DCI
Engineers (“DCI”) and Defendant-Appellee Mayse & Associates, Inc. (“Mayse”).

2. On June 11, 2020, the District Court issued an Order granting Mayse's Motion to Dismiss for Violation of the Texas Certificate of Merit Law.

3. On July 10, 2020, Underwriters filed a timely Notice of Appeal from the Order dismissing Mayse from this litigation. That appeal is Cause No. 13-20-00261-CV, and is Underwriters' first appeal in this matter.

4. Both the Reporter's and Clerk's Records have been filed in Cause No. 13-20-00261-CV, and Underwriters' Appellant's Brief is currently due September 14, 2020. However, contemporaneous with this Motion, Underwriters are filing a motion in that appeal seeking a 30 day extension of time to file that Brief.

5. The instant appeal (Cause No. 13-20-00377-CV) is Underwriters' second appeal in this matter. It pertains to three District Court Orders, all issued after Underwriters commenced their first appeal (Cause No. 13-20-00261-CV). In many instances, the underlying motion briefs were also filed after Underwriters commenced their first appeal.

6. The first two Orders are A) an August 24, 2020 Order Granting Mayse & Associate, Inc.'s Motion to Strike the Supplemental Affidavit of Mr. Itle attached to Underwriters' Motion for New Trial, Motion to Modify the Judgment, and Motion for Reconsideration, and B) an August 24, 2020 Order (denying) Underwriters' Motion for New Trial, Motion to Modify the Judgment, and Motion for Reconsideration (of the June 11, 2020 Order granting Mayse's Motion to Dismiss).

Both are directly connected to the Order granting Mayse's Motion to Dismiss, which is the subject of Underwriters' first appeal (Cause No. 13-20-00261-CV).

7. The third Order is an August 24, 2020 Order on DCI Engineers' Motion to Dismiss (granting that Motion). That dismissal is on the exact same basis as the dismissal of Underwriters' claims against Mayse (again the subject of Underwriters' first appeal) -- an alleged violation of *Tex. Civ. Prac. & Rem. Code*. §150.002.

8. As established above, Underwriters' two appeals (Cause No. 13-20-00261-CV and Cause No. 13-20-00377-CV) not only arise out of the same litigation, they are substantively closely connected with one another. Consequently, Underwriters respectfully submit that the interests of judicial economy, as well as the effective resolution of the common issues raised in both appeals, are best served if the instant appeal (Cause No. 13-20-00377-CV) is consolidated with Underwriters' other appeal (Cause No. 13-20-00261-CV) for briefing, oral argument and resolution by this Court.

9. Furthermore, Underwriters respectfully suggest that the ultimate briefing schedule in Cause No. 13-20-00261-CV be applied to the consolidated appeals. If a 30 day extension of time to file Underwriters' Appellant's Brief is granted in that matter, their Appellant's Brief will be due October 14, 2020. Presuming the Clerk's Record is prepared and filed by then regarding Cause No. 13-20-00377-CV (there is no Reporter's Record regarding this appeal), Underwriters

foresee no issues in filing their Appellant's Brief (addressing all issues in both appeals) by that date.

10. On August 31, 2020, Underwriters' counsel conferred with counsel for the Appellees (Mayse regarding the first appeal, and Mayse and DCI regarding the second appeal), seeking their concurrence in this Motion. Appellee Mayse will not concur. Appellee DCI has not committed to concurring (or opposing) the relief requested in this Motion.

WHEREFORE, Plaintiff-Appellant Underwriters respectfully requests that their Motion to Consolidate this appeal (Cause No. 13-20-00377-CV) with Cause No. 13-20-00261-CV be granted.

Respectfully submitted,

DENENBERG TUFFLEY

/s/ Paul B. Hines

PAUL B. HINES (Texas Bar No. 24104750)
28411 Northwestern Hwy, Suite 600
Southfield, MI 48034
Phone | (248) 549-3900
Facsimile | (248) 593-5808
phines@dt-law.com

*Counsel for Plaintiff-Appellant Certain
Underwriters at Lloyd's of London
Subscribing To Policy No. NAJL05000016-
H87, as Subrogee of Momentum Hospitality,
Inc. & 75 and Sunny Hospitality d/b/a
Fairfield Inn & Suites*

CERTIFICATION OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served on the attorneys of record of all parties to the above cause via Texas Court's e-filing system, which sends notice to counsel of record on the 3rd day of September, 2020.

/s/ Davette R. Seldon
Davette R. Seldon

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Paul Hines
Bar No. 24104750
phines@dt-law.com
Envelope ID: 45945815
Status as of 9/3/2020 2:29 PM CST

Associated Case Party: Certain Underwriters at Lloyd's of London Subscribing to Policy No. NAJL05000016-H87, as Subrogee of Momentum Hospitality, Inc. & 75 and Sunny Hospitality d/b/a Fairfield Inn & Suites,

Name	BarNumber	Email	TimestampSubmitted	Status
Evan J.Malinowski		emalinowski@dt-law.com	9/3/2020 10:54:23 AM	SENT
Paul BHines		phines@dt-law.com	9/3/2020 10:54:23 AM	SENT
Michael R.Marx		mmarx@dt-law.com	9/3/2020 10:54:23 AM	SENT
Davette Seldon		dseldon@dt-law.com	9/3/2020 10:54:23 AM	SENT
Felicia Tyson		ftyson@dt-law.com	9/3/2020 10:54:23 AM	SENT

Associated Case Party: D'Amato Conversano, d/b/a DCI Engineers, and Mayse & Associates, Inc

Name	BarNumber	Email	TimestampSubmitted	Status
William KLuyties		WKL@lorancethompson.com	9/3/2020 10:54:23 AM	SENT
Paul JGoldenberg		PJG@lorancethompson.com	9/3/2020 10:54:23 AM	SENT
Richard ACapshaw		richard@capslaw.com	9/3/2020 10:54:23 AM	SENT
Stanhope BDenegre		stan@capslaw.com	9/3/2020 10:54:23 AM	SENT
Mark A.Youngjohn		myoungjohn@donatominxbrown.com	9/3/2020 10:54:23 AM	SENT
Aaron Pool		apool@donatominxbrown.com	9/3/2020 10:54:23 AM	SENT